

Occupational Safety and Health Administration

29 CFR Part 1960

**Basic Program Elements for Federal Employee Occupational Safety and Health Programs
and Related Matters**

Subpart I. Recordkeeping and Reporting Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final Rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is issuing a final rule amending the occupational injury and illness recording and reporting requirements applicable to Federal agencies (29 CFR Part 1960, Subpart I), including the forms used by Federal agencies to record those injuries and illnesses. The final rule will make the Federal sector's recordkeeping and reporting requirements essentially identical to the private sector by adopting applicable provisions from 29 CFR Part 1904 as Federal agency requirements under 29 CFR Part 1960. In addition to eliminating the problems in the existing system whereby injuries and illnesses suffered by some groups of employees, such as contract employees, are not recorded, this final rule will produce more useful injury and illness records, collect better information about the incidence of occupational injuries and illnesses at the establishment level, create reporting and recording criteria that are consistent among Federal agencies, enable injury and illness comparisons between the Federal and private sectors, and promote improved employee awareness and involvement in the recording and reporting of job-related injuries and

illnesses. The final rule will also assist in achieving the stated goal in Executive Order 12196 that Federal agencies comply with all OSHA standards, and generally, assure worker protection in a manner comparable to the private sector. This final rule applies to all Federal agencies of the Executive Branch subject to Executive Order 12196, and does not apply to military personnel and uniquely military equipment, systems, and operations.

The requirements of this Part do not diminish or modify in any way a Federal Agency's responsibility to report or record injuries and illnesses as required by the Office of Workers' Compensation Programs under the Federal Employees' Compensation Act (FECA).

DATES: This final rule becomes effective January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Director, Office of Federal Agency Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-3622, Washington, D.C. 20210, Telephone 202-693-2122.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 19 of the Occupational Safety and Health Act (the "OSH Act") (29 U.S.C. 668) includes provisions to ensure safe and healthful working conditions for Federal sector employees. Under that section, each Federal agency is responsible for establishing and maintaining an effective and comprehensive occupational safety and health program consistent with the standards promulgated by OSHA under Section 6 of the OSH Act. Executive Order 12196, Occupational Safety and Health Programs for Federal Employees, issued February 26, 1980, prescribes additional responsibilities for the heads of Federal agencies, the Secretary of Labor, and the General Services Administrator. Among other things, the Secretary of Labor, through OSHA, is required to issue basic program elements with which the heads of agencies

must operate their safety and health programs. These basic program elements are set forth at 29 CFR Part 1960. Section 19 of the OSH Act, the Executive Order, and the basic program elements under 29 CFR 1960 apply to all agencies of the Executive Branch except military personnel and uniquely military equipment, systems, and operations. This final rule will amend the basic program elements under 29 CFR Part 1960, Subpart I, to make pertinent private sector recordkeeping requirements under 29 CFR Part 1904 applicable to all Executive Branch Federal agencies. By amendment to the OSH Act on September 28, 1998 (through the Postal Employees' Safety Enhancement Act), the U.S. Postal Service is already complying with the recordkeeping requirements under Part 1904.

Pursuant to Section 19(a) of the OSH Act, each head of a Federal agency is responsible for keeping adequate records of all occupational injuries and illnesses. Section 1-401(d) of the Executive Order provides the Secretary of Labor with the authority to prescribe recordkeeping and reporting requirements for Federal agencies. Under 29 CFR 1960, Subpart I, each Federal agency is currently responsible for keeping records of all occupational injuries and illnesses. Section 19 of the OSH Act also provides the Secretary of Labor with access to occupational injury and illness records and reports kept and filed by Federal agencies "unless those records and reports are specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy, in which case the Secretary of Labor shall have access to such information as will not jeopardize national defense or foreign policy."

In its role as the lead Agency for implementing and reviewing compliance with Executive Order 12196 and the basic program elements set forth at 29 CFR 1960, OSHA requires Federal agencies to comply with all occupational safety and health standards, and generally, to assume responsibility for worker protection in a manner comparable to private employers. The OSH Act

authorizes the Secretary of Labor to issue two types of final rules, “standards” and “regulations.” Occupational safety and health standards issued pursuant to Section 6 of the Act specify the measures to be taken to remedy occupational hazards. 29 U.S.C. 652(8), 655. OSHA regulations, issued pursuant to general rulemaking authority found, inter alia, under Section 8 of the Act, are the means to effectuate other statutory purposes, including the collection and dissemination of records on occupational injuries and illnesses. 29 U.S.C. 657(c)(2). Because 29 CFR 1904, which sets forth occupational injury and illness recordkeeping requirements for the private sector, was promulgated pursuant to Section 8 of the OSH Act, and thus is technically a “regulation” and not a “standard,” Federal agencies are currently not required to comply with the provisions in Part 1904. Therefore, OSHA is amending the basic program elements at 29 CFR 1960, Subpart I, to make pertinent private sector recordkeeping and reporting requirements under Part 1904 applicable to the Federal sector.

II. Functions of the Recordkeeping System

In general, recording incidents of occupational deaths, injuries, and illnesses have several distinct functions or uses for employers, employees, and OSHA. One is to provide information to employers about hazards in their workplaces that are injuring or making their employees ill. Employers and employees can then use the information to implement safety and health programs at individual workplaces. Analysis of injury and illness data is a widely recognized method for discovering workplace safety and health problems and for tracking progress in solving those problems.

Federal employees who are better informed about the hazards they face are more likely to follow safe work practices and to report workplace hazards to their Federal agency safety and

health personnel. Such employees may then participate in identifying and controlling those hazards, thus improving the overall level of safety and health in the workplace.

The records are an important source of information for Federal agency safety and health staff, as well as for OSHA's oversight function. Federal agency safety and health personnel use the data to identify the most dangerous worksites, as well as during inspections to help direct their efforts to the hazards in the workplace that are hurting workers. Injury and illness information is used to develop statistics that assist OSHA (through its oversight function) in identifying the scope of occupational safety and health problems and decide whether regulatory intervention, compliance assistance, or other measures are warranted. These data also provide the outcome measures used to determine the effectiveness of Federal agency safety and health programs.

Section 8 of the OSH Act authorizes the Secretary of Labor to issue regulations she determines to be necessary to carry out her statutory functions, including regulations requiring employers to record and report work-related deaths and non-minor injuries and illnesses. OSHA's regulations under 29 CFR 1904 include requirements for recording, maintaining, posting, retaining, and reporting occupational injury and illness information in the private sector. Employers must record each fatality, injury, and illness that is work related, is a new case, and meets one or more of the general recording criteria in § 1904.7, or specific cases as described under § 1904.8 through § 1904.12. Under Part 1904, recordable work-related injuries and illnesses are those that result in one or more of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, loss of consciousness, or diagnosis of a significant injury or illness. Injuries include cases such as, but

not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses such as, but not limited to, a skin disease, respiratory disorder, or poisoning.

Also under Part 1904, employers are required to let employees know how and when to report work-related injuries and illnesses. This means that the employer must set up a system for the employees to report work-related injuries and illnesses and instruct them on how to use it. Part 1904 does not specify how the employer must accomplish these objectives, so employers have flexibility to set up systems that are appropriate to their workplace.

III. Overview of the Existing Federal Sector Recordkeeping System

Under 29 CFR Part 1960, Subpart I, Federal agencies are required to collect occupational injury and illness data, analyze these data to identify unsafe and unhealthful working conditions, and establish program priorities based on their analyses. Under existing 1960.67c, Federal agencies are required to record only injury and illness information that is reported to the Office of Workers' Compensation Programs (OWCP) on forms CA-1, CA-2, or CA-6.¹ Under this system, injuries and illnesses are recordable only if a medical expense was incurred or expected, or if the employee was away from work or on leave without pay (LWOP) or continuation of pay (COP) as a result of the injury or illness.

OSHA uses injury and illness statistical data provided by OWCP to set program priorities, identify Federal worksites for OSHA oversight activity, and monitor agencies' progress in reducing occupational injury and illness. Also, OSHA uses the injury and illness statistical data from OWCP to develop an annual report for the President on the status of Federal civilian employees' safety and health.

¹ CA-1, Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation; CA-2, Notice of Occupational Disease and Claim for Compensation; CA-6, Official Superior's Report of Employee's Death.

Under the existing system, the records used by Federal agencies include the OSHA Federal Agency Log and Summary of Occupational Injuries and Illnesses, and the OSHA Form 101, Supplementary Record of Occupational Injuries and Illnesses. On the OSHA Federal Agency Log, agencies must include some brief descriptive information, and use a simple check-off procedure to maintain a running total of occupational injuries and illnesses for the year. OSHA Form 101 is used to provide supplementary information regarding each injury and illness entered on the log. Alternate forms, such as workers' compensation forms, may be used if they contain all the information OSHA requires.

Existing Part 1960, Subpart I, directs each Federal agency to complete an annual summary of occupational injuries and illnesses based on the OSHA Federal Agency Log. Agencies are also required to post a copy of the annual summaries for injuries and illnesses at each establishment. Under the existing system, the head of each Federal agency must ensure access to the injury and illness logs and annual summaries to Occupational Safety and Health Committees, employees, former employees, and employee representatives.

IV. OSHA's Reasons for Revising the Recordkeeping Rule for the Federal Sector

A. The Need to Improve the Quality of the Federal Recordkeeping System

OSHA's revision, which essentially adopts applicable private sector recordkeeping requirements under Part 1904, will increase the ability of Federal agency establishments to identify and track occupational injury and illness trends, extend the injury and illness recordkeeping requirements to all civilian workers in the Executive Branch, eliminate the problems associated with non-existent injury and illness reporting for contract employees who are supervised on a daily basis by Federal workers, improve Federal agency and Federal employee awareness of the root causes of accidents in their workplace, create more consistent

statistics from Federal agency to Federal agency, and resolve the problem of incompatibility of data between the private sector and Federal sector. Establishing Part 1904 recordkeeping requirements will also reduce reporting errors because Part 1904 is written in plain language, is more detail oriented, uses the question-and-answer format, minimizes ambiguity, eliminates recording of minor injuries and illnesses, and allows agencies flexibility to use computer programs to meet their OSHA recordkeeping obligations.

From an administrative and management perspective, differences in Federal sector and private sector recordkeeping requirements are confusing to Federal agencies and OSHA personnel. Establishing one regulation for recordkeeping will standardize the requirements for both the Federal and private sectors.

Standardizing recordkeeping requirements will allow for more accurate comparisons between Federal and private sector injury and illness experiences. Under the existing Part 1960, Subpart I, recordkeeping system for Federal agencies, comparable data to show how Federal agencies compare statistically with the private sector injury and illness experiences are not available due to the differences in reporting and recording requirements. Therefore, OSHA has not been able to address the concerns raised by several organizations that monitor government activity, and respond to the perception that the Federal Government has a worse injury and illness experience than its private industry counterparts.

For instance, from time to time certain advocacy groups have issued reports comparing some Federal agencies with the highest occupational injury or illness rates per 100 full-time workers with different sectors of private industry. These reports avowed that several Federal agencies had significantly higher occupational injury and illness rates than their private sector counterparts. While the reports intimated that an employee was more likely to be injured or

become ill while working for a Federal agency than working for a number of high-risk private sector industries, the reports compared risks in different industries, and OSHA could not verify the injury and illness data reported.

This is best shown in an example of injuries that are compensable but not recordable under 29 CFR 1904. Consider the case where a private sector employee falls on the job, notes pain in his or her shoulder, is sent for evaluation at a local emergency room, and following an examination and x-ray, is released back to work without restrictions, days away from work, or medical treatment beyond first aid. Under 29 CFR 1904, this case would not be recordable because it does not meet any of the recording requirements (evaluation and x-rays for diagnostic purposes are considered first aid under 29 CFR 1904.7(b)(5)(i)(A) & (B) and the case would not be recordable). However under the current Federal agency recordkeeping system, if the employee files for reimbursement of medical costs under FECA, a CA-1 must be submitted and the case would be recorded.

Another reason for revising the occupational injury and illness recordkeeping system for the Federal sector is that under Part 1960, Subpart I, many groups of employees are not included in the recordkeeping process, including employees hired through the Non-Appropriated Funds Instrumentalities Act (NAFIA), Commissioned Officers of the Public Health Service, and contract employees working under the daily supervision of Federal personnel. Conversely, volunteers are covered under Part 1960 through OWCP reporting requirements, which is not the case for the private sector under Part 1904.

The existing Part 1960 also creates inconsistencies in recordkeeping among Federal establishments. FECA compensability covers injuries to employees that occur on the employer's premises during work hours or in reasonable proximity to the work hours, and the incident is

recorded if a CA form is submitted to OWCP because the incident results in a reimbursable medical expense to the employee. Establishments with in-house medical facilities or with contracts for medical services to treat their employees are likely to have fewer claims filed under FECA for medical reimbursement, and therefore are likely to have fewer incidents that are recordable. Establishments without in-house medical facilities or contracts for medical service would record employee injuries and illnesses that result in filing a CA form for any reimbursable medical expense(s). Federal agency establishments with in-house medical staff frequently do not record such events, while those establishments that rely on outside medical staff to treat their injured or ill employees would record such events.

Another example of current inconsistencies in recordkeeping among Federal agencies lies with the U.S. Postal Service (USPS). As mentioned earlier, the U.S. Postal Service, which comprises approximately one-third of the Federal sector workforce in the Executive Branch, is already recording injuries and illnesses under Part 1904 regulations, while the remaining two-thirds of the Federal sector are recording under Part 1960.

The existing Part 1960 system captures little data that are useful in identifying root causes of accidents, fails to adequately capture days away from work, fails completely to capture days of restricted activity or job transfer, and fails to capture important data related to bloodborne pathogens, such as needlesticks and other sharps injuries.

Additional reasons for changing Federal agencies' recordkeeping requirements to the Part 1904 system include: the OSHA 300 log more accurately reflects injuries and illnesses at a glance than does the existing Federal agency log; injuries and illnesses for all employees, including contract employees who are supervised by Federal employees on a daily basis and whose employers do not also record, will be covered; the calendar year reporting will be

consistent with the recordkeeping practices in private industry; and, a unified tracking system will result for all workplace injuries and illnesses covered by OSHA.

OSHA's Voluntary Protection Program (VPP) is a program that recognizes worksites with exemplary safety and health programs. In the VPP, management, labor, and OSHA establish cooperative relationships at workplaces that have implemented a comprehensive safety and health management program. OSHA's experience indicates that when an employer commits to the VPP approach to safety and health management and completes the challenging VPP application process, the result includes a dramatic improvement in the organization's safety and health performance.

To qualify for VPP, an establishment must have comprehensive safety and health management programs that include effective injury, illness, and accident recordkeeping, as well as injury and illness lost time and total case rates below the national averages, as measured under Part 1904. As Federal agencies participating in VPP are currently required to maintain records under two systems, the Federal sector has just over ten VPP sites (including a few in the USPS, as of December 31, 2003) compared to over 1,000 in private industry. Adopting the Part 1904 recordkeeping system for the Federal sector will yield consistent injury and illness and illness data, and would make participation in the VPP program much more attractive to Federal agencies.

Standardizing the private and Federal sector recordkeeping and reporting requirements will lessen the administrative burden on OSHA when changes to the recordkeeping requirements need to be made, as well as streamline training efforts. If the recordkeeping systems remain separate, any changes made to the requirements in the private sector will not be applicable to the Federal sector, unless additional modifications to Part 1960, Subpart I, are made reflecting such

changes. Requiring Federal agencies to comply with Part 1904 will largely eliminate this problem. Additionally, standardizing the private and Federal sector recordkeeping and reporting requirements will eliminate OSHA's need to develop and present separate training, outreach, interpretations, etc. on both systems.

B. Advantages for Adopting Applicable Part 1904 Requirements in Part 1960, Subpart I

The advantages of improved recordkeeping fall into two groups. Improved recordkeeping will enhance the ability of Federal agencies and Federal employees to prevent occupational injuries and illnesses. Also, improved recordkeeping and reporting will increase the utility of injury and illness records for Federal agency safety and health staff as well as OSHA's oversight function.

(1) Enhanced Ability of Federal Agencies and Their Employees to Prevent Injuries and Illnesses. Collecting additional or improved information about events and exposures of injuries and illnesses on Form 301, including information on the location, the equipment, materials or chemicals being used, and the specific activity being performed, will increase the ability of Federal agencies and their employees to identify hazardous conditions and take remedial action to prevent future injuries and illnesses. Identifying the irritating substance that caused an employee to experience a recordable case of occupational dermatitis, for example, could prompt a Federal agency to re-examine available Material Safety Data Sheets to identify a non-irritating substitute material. On Form 301, details will be recorded in a logical sequence that will help structure the information and focus attention on problem processes and activities. Thus the establishment's records of injuries and illnesses will provide management with an analytical tool that can be used to control or eliminate hazards.

(2) Increased Utility of Data to Federal Agency Safety and Health Staff and OSHA.

Improvements in the quality and usefulness of the records being kept by Federal agencies will enhance their capacity to: focus investigative efforts on the most significant hazards; identify types or patterns of injuries and illnesses whose investigation might lead to prevention efforts; and, set priorities among Federal agency establishments for inspection purposes. Federal agencies and their employees both stand to benefit from the more effective use of Agency resources. The enhanced ability of safety and health personnel to identify patterns of injuries will enable them to focus on the more serious hazards.

Identifying such patterns will also increase the ability of Federal agencies to control these hazards and prevent other similar injuries. To the extent that Federal agencies take advantage of this information, the task of OSHA's oversight function will be facilitated. Federal employees clearly will also benefit from these reductions in injuries.

Specific Advantages of the Final Rule

(1) Forms Simplification and Definitions. Simplifying the forms used by Federal agencies will result in improved information. The same is true of definitional changes, such as counting lost workdays or restricted workdays as calendar days and capping the count at 180 days. Easier recording of data will make records of individual cases more complete and consistent. By using simplified recording procedures, we hope to encourage more complete recording of job-related injuries and illnesses. This process is illustrated by the change from days away from work to calendar days. This change represents an explicit decision to shift the emphasis from lost productivity to the seriousness of the injury or illness. Calendar days are a more accurate and consistent reflection of seriousness than are lost scheduled workdays. They are also directly comparable across establishments and industries while days away from work are

not. Thus, calendar days produce more useful information for the purpose of assessing patterns of injuries and illnesses. This variable is also generally much simpler to determine and record, so that the information is more likely to be complete and accurate. This combination of attributes, OSHA believes, will substantially improve the quality of the information available for analysis and enhance the resulting actions taken to reduce job-related injuries and illnesses.

(2) *Recordable Injuries and Illnesses.* The changes in defining injuries and illnesses that are recordable have several advantages. In general, they follow a pattern of simplification and/or more cost effective targeting of recording requirements, which should produce the types of advantages discussed above. Changes that add to the information recorded have other benefits as well.

Specified Recording Thresholds. One change involves identifying the threshold at which a medical removal condition or restriction is to be recorded, and tying this to the level in a specific OSHA standard (lead, cadmium, etc.). This requirement involves no increase in cost to Federal agencies since the pre-removal or restriction conditions are already required under the specific OSHA standard.

Needlesticks and Sharps Injuries and Hearing Loss Cases. By far the most extensive change in recording is the requirement to report *all* needlesticks and sharps injuries involving exposure to blood or other potentially infectious materials. In effect, OSHA is changing the emphasis on these injuries from the effects (the injury's medical treatment) to the actual injury caused by the incident (i.e., the needlestick or sharps injury). Recording all needlesticks and sharps injuries will provide far more useful information for illness prevention purposes to Federal agencies that administer hospitals and other medical facilities. Unlike many other conditions (e.g., blood poisoning and hearing loss) that are progressive, AIDS and hepatitis are

either present or they are not. In any given work setting, the risk is probabilistic and bi-modally distributed; whether one is infected by an injury or one is not. Under these circumstances, the important focus is to prevent all injuries that might lead to illness. For that prevention strategy to be successful, however, the agency should have a complete picture of the overall pattern of all needlesticks and sharps injuries. This requires recording all such injuries, whether or not they result in AIDS, hepatitis, or other bloodborne illness.

Because of their high mortality and disability potentials, AIDS and hepatitis are particularly serious illnesses. One implication of this fact, however, is that the benefits per case of prevention are large. Another implication is that there are substantial employee morale benefits to a prevention program that is comprehensive and well informed. Recording all risky wounds and then using the data for prevention are actions that are reasonable. Adopting Part 1904 provisions is also likely to result in indirect benefits in the form of improved patient care.

Hearing loss cases also result in substantial disability and can lead to safety accidents in the workplace. OSHA believes that aligning the recording threshold for such cases with the Standard Threshold Shift criterion in the Agency's Occupational Noise Standard will simplify recording for many Federal agencies that are already familiar with this criterion. The shift in this recording criterion will also increase the number of hearing loss cases captured by the recordkeeping system and provide core opportunities for Federal agencies to intervene to prevent other hearing loss cases.

(3) *Procedural Changes and Informational Requirements.* The relationship between costs and benefits varies for the final rule's procedural changes and for its requirements for additional information. Some provisions have positive but trivial costs. Others have more significant costs but provide substantial advantages.

De Minimis Costs. A number of changes have costs that are so low that the benefits of the change are clearly greater. Examples include the provisions discussed below. Recording incidents within seven calendar days, rather than six working days, will impose costs for more rapid recording on establishments that work only five days a week. The reduced burden resulting from a simpler deadline—one week later—almost certainly outweighs this minimal cost, however. Moreover, for establishments that operate six or seven days a week, such as the law enforcement agencies, this change does not impose any additional costs. Under Part 1960, Federal agencies must compile the Annual Summary on a fiscal year basis, complete the Summary not later than 45 calendar days after the close of the fiscal year, and post the Summary copy for a minimum of 30 consecutive days. Under Part 1904, the Summary must be compiled at the end of the calendar year, completed no later than February 1, and posted until April 30. The cost, if any, for posting (but not revising) the Annual Summary for three months, rather than one month, is extremely small—particularly considering that quite a number of other certificates and information (e.g. elevator or boiler inspection certificates) must be posted at all times. The ability of employees to refer back to the Annual Summary information, as well as the availability of the information to new employees when they are hired, clearly produces benefits that exceed the costs.

Certification by an Agency Executive. The requirement that an Agency executive certify the Summary will have the effect of increasing the oversight and accountability of higher management in health and safety activities. The certifying official will be responsible for ensuring that systems and processes are in place, and for holding the recordkeeper accountable. This increased awareness of job-related injuries and illnesses, and of their prevention, will translate into fewer accidents and injuries because the certifying executive will have a

heightened sense of responsibility for safety and health, although quantifying this benefit is not possible at this time.

Additional Data Requirements for Form 301 and Form 300-A. The final rule will require Federal Agencies to provide several additional pieces of information, at an estimated cost of two minutes per Form 301 and twenty minutes per Form 300-A. Additional information related to incidents (on Form 301) includes: employee's date of hire, emergency room visits, time the employee began work (starting time of the shift), and time of the accident. Additional establishment information (on the Form 300-A Summary) includes: annual average number of employees employed in that year, and total hours worked by all employees during the year. Information on the injured employee's date of hire can provide insight into a number of factors that have been shown to relate to injury rates. Such factors may include inadequate training, inexperience on the job, etc. If OSHA were to link its injury data with information on the distribution of job tenure, for example, it could then calculate injury rates by job tenure category for different jobs. That information will help to identify areas where better training would have the greatest potential to reduce injuries. Data on starting times of shifts and the time of occurrence of the accident will facilitate research on whether accidents rates vary by shift, and whether certain portions of a shift are particularly dangerous. This information will be helpful to OSHA as well as a Federal agency's own assessment of workplace safety and health. Most importantly, employees will receive the information they need to understand both the absolute and relative incidence of injuries and illnesses in their establishment. The inclusion of information concerning the average number of employees and total hours worked by all employees during the year will make it easier to calculate incidence rates directly from the posted summary. Federal agencies will also benefit from their ability to obtain incidence

information quickly and easily. At the establishment level, occupational injury and illness records are examined at the beginning of a safety and health inspection and used by compliance personnel to identify safety and health problems that deserve attention. The data on Form 300 and Form 301 will also be used to determine what areas of the site, if any, warrant particular attention during the inspection.

V. The Present Rulemaking

The Federal Advisory Council on Occupational Safety and Health (FACOSH) was established by Executive Order 11612 to advise the Secretary of Labor on matters relating to the occupational safety and health of Federal employees. At the request of FACOSH, OSHA held a meeting on October 31, 2002 to discuss proposed changes to Federal agency occupational injury and illness recordkeeping and reporting requirements. Representatives from fourteen Federal departments or agencies and two Federal employee unions attended the meeting. Although OSHA received almost unanimous consensus that recordkeeping requirements for Federal agencies should be changed, two issues were raised.

The first issue concerned whether under the proposed change a Federal agency could collect and report their injury and illness data on a fiscal year basis instead of a calendar year basis. Some agencies wanted to report on a fiscal year basis so that the OSHA 300 log and the workers' compensation chargeback costs reflected the same time periods. Currently, fiscal years (October through September) and chargeback years (July through June) do not reflect the same time periods. However, since OWCP chargeback data are available to each agency on a quarterly basis, agencies could use their data to compare chargeback costs to OSHA recordable injuries and illnesses for any period of time they desired. Also, use of the calendar year

recording and reporting would allow for more accurate comparisons of Federal and private sector data.

At the meeting, the second issue discussed was the differences between the information required on the CA forms and the OSHA 301 incident report, and having to complete two different forms. While preparation of duplicative paperwork should be avoided, clearly in most instances if the CA form is used, a supplemental statement will frequently still be necessary to comply with OSHA reporting requirements. Agencies must be sensitive to the fact that the CA-1 or CA-2 is frequently the first entry in a FECA case record, and these forms are maintained in a Privacy Act government-wide system of records known as DOL/GOVT-1. Release of information on the CA forms must be consistent with the purpose for which the record was created and must be authorized by the Federal agency as a routine use under the Privacy Act. While elements of the CA-1, CA-2, and CA-6 contain some information useful to OSHA, OWCP's forms are focused on identifying the injury, properly compensating the individual for any wage loss or impairment, and affecting a smooth return to duty. The data collected by OWCP, while valuable for its purpose under FECA, may for OSHA's purposes provide too much unnecessary and extremely personal information about the employee and too little information on the details of how the injury occurred. Accordingly, while use of the information on the CA forms is not prohibited under the new OSHA rule because the Department of Labor seeks to minimize the burdens placed on agencies, OSHA recommends that each agency analyze whether it would be just as easy and cost effective to comply with these new requirements by implementing a system where OSHA 301 forms are completed contemporaneously with CA forms. The information requested on the OSHA 301 form, such as Items 14 – 17 which asks, *“What was the employee doing just before the incident occurred”, “What happened?”, What*

was the injury or illness?”, or *“What object or substance directly harmed the employee?*”, are not asked on the CA forms. Certain data elements contained on the CA forms contain personal information (such as the names of eligible dependents under FECA) which must be deleted before the CA forms are utilized to comply with OSHA’s new rule. For example, the following information must be deleted from the CA-1 forms: Entry 2 for Social Security Number, Entry 3 for Date of Birth, Entry 5 for Home Telephone Number, Entry 6 for Grade Level as of the date of injury, Entry 7 for Employee’s Home Mailing Address, Entry 8 for Dependent Information, Entry 19 for Employee’s Retirement Coverage, Entries 30 and 31 relating to information on Third Party subrogation, Entries 32 to 34 relating to medical treatment and the Receipt of Notice of Injury.

The Department of Labor wishes to note that the use of electronic filing systems for Federal workers’ compensation claims would facilitate the elimination of those data fields not needed by OSHA. Moreover, an electronic prompt could then be developed when preparing the OSHA Form 301 at a time when memories of the injury are fresh and useful details about the injury can be most easily obtained. For example, a description of an injury on a CA form, such as “slipped in hallway,” while sufficient for FECA purposes, might fail to alert safety and health professionals to the fact of which hallway or that the hallway in question is improperly lighted or slippery.

At the January 10, 2003 FACOSH meeting, OSHA gave a presentation describing the differences between recordkeeping requirements under Parts 1904 and 1960. OSHA pointed out that Part 1904 provides very specific instructions on recording criteria, and even contains a flow chart to aid in the decision-making process of recordability. OSHA also discussed the new forms and reviewed the timeframes to record injuries and illnesses. A number of questions followed

the presentation, and FACOSH recommended that OSHA hold a meeting of Federal agency safety and health representatives to discuss the impact of the proposed recordkeeping change.

On February 25, 2003, OSHA held an informal meeting that was open to the public to discuss the proposed change. This meeting was announced in the Federal Register on February 10, 2003 (Vol. 68, No. 27 FR 6783). The meeting agenda included: reason for the proposed change, description of the change, impact of the change, and implementation of the change. The meeting also provided a forum to air any issues that Federal agencies or the public wanted to bring up regarding the proposed change. The meeting produced four main issues: cost, timing, systems adjustment, and training. Representatives attended the meeting from twenty-one Federal agencies, two labor unions representing Federal employees, and several members of the public.

Some felt that since Federal injury and illness rates continued to fall, Federal agencies would receive no benefit in switching recordkeeping systems. OSHA explained that this statement was not entirely accurate. Federal rates increased slightly between 1999 and 2001, while the private sector rates declined by 9.5%. However, as already mentioned, comparing rates between the two recordkeeping systems is not currently possible because the two systems do not measure the same injury and illness experiences.

Some agencies were concerned about the training costs they expected to incur to educate their employees about the new recordkeeping procedures. OSHA explained that while there could be some costs associated with training, this should not be significant. The new system is similar to existing Part 1960, Subpart I, in recording injury and illness incidents, and the Part 1904 regulation is written in plain, user-friendly language, which should permit easily understandable recording criteria. Additionally, OSHA has developed training materials and will make training available as resources permit. OSHA will maximize the use of distance-learning

technology and satellite broadcasting to make training available to the greatest number of personnel at the lowest possible cost. In some instances, OSHA plans to make available DVDs and videos to disseminate training materials, and OSHA has Part 1904 recordkeeping training material already available on its website.

Based on OSHA's experience with other transitions to Part 1904, the overall costs associated with changing the Federal agency injury and illness recordkeeping system should not be significant. Many Federal agencies perform work activities comparable to private sector employers, and OSHA has not been made aware of any significant concerns raised by the private sector related to the economic resources needed to complete the transition to and subsequent compliance with Part 1904. Any discussion regarding the cost to the Federal Government for implementing the provisions under Part 1904 must be considered in light of the fact that OSHA already requires private sector employers, some with as few as eleven employees, to comply with these same recordkeeping requirements. Likewise, since 2001, twenty-six States have been requiring employers of public sector employees (State and local government employees) to comply with the Part 1904 recordkeeping requirements, and there has been no indication of a resource problem.

OSHA has also discussed Part 1904 transition with the U.S. Postal Service, and no significant problems related to cost have been identified. During 1999, the Postal Service established Part 1904 requirements at 38,000 of its facilities nationwide, and although the Agency did not specifically monitor the cost of training or implementation, the Postal Service did derive several benefits in its incident prevention efforts. For example, after implementing Part 1904, the Postal Service created an enhanced database of causal factors based on the reporting and investigation of all occupational injuries and illness beyond those previously

reported to OWCP. The new information was used by the Postal Service to develop recommendations to address those causal factors and prevent reoccurrence of similar incidents. Since 1998, the Postal Service has achieved an 11% reduction in their lost time case rate (from 3.03 in FY 1998 to 2.69 in FY 2003). The Postal Service lost time case rate (a measurement of the occurrence of severe injuries and illnesses) represents an 18% improvement over the rest of Executive Branch Federal agencies. OSHA considers the information obtained from the Postal Service to be significant since the USPS employs approximately one-third of the total Federal workforce.

Costs of transition

As discussed elsewhere, because this final rule only applies to Federal sector personnel, OSHA is not required to develop the usual economic analysis normally conducted during the rulemaking process. However, in order to inform Federal agencies, OSHA is including in this section a discussion of the anticipated costs associated with the transition from the existing Part 1960 recordkeeping system to the requirements in Part 1904. In general, the costs associated with this transition are minimal, since Federal agencies are already complying with the existing Part 1960 recordkeeping provisions. In any event, OSHA believes that the advantages of simplified Federal agency administration and improved Federal employee safety and health derived from compliance with Part 1904 far exceed the expected minimal costs associated with the transition.

OSHA's analysis conducted for the private sector rulemaking on Part 1904 estimated the average annual cost for each establishment for compliance at less than \$58.00. OSHA also estimated the average annual cost for establishments with fewer than twenty employees at \$31.63. Because the requirements for Federal establishments will be essentially the same as

those for covered private sector establishments, there is reason to believe that transition to Part 1904 will result in similar relatively low costs to Federal establishments. Likewise, OSHA is not aware of any information indicating that the average annual cost per Federal establishment will exceed the private sector estimate.

For a full explanation of the costs and how they were estimated, see Federal Register Vol 66, No. 13 / Friday, January 19, 2001 / pages 6089 – 6108.

Like their private sector counterparts, Federal agencies will incur the initial costs of training recordkeeping personnel. OSHA estimates this at one hour per person trained. Also, each Federal agency establishment will incur the annual cost of setting up the injury and illness log and posting the Annual Summary. OSHA estimates this will require eight minutes per establishment. However, since Federal agencies must already keep a log and post a summary, it is estimated that these tasks will not result in any additional costs.

The costs associated with maintaining the Injury and Illness Log and Incident Reports (Form 301) are related to the number of cases recorded. During the private sector rulemaking, OSHA estimated that compliance with Part 1904 requires an average of fifteen minutes for the log entry plus, for 18% of the cases, twenty-two minutes for each 301 form. In fiscal year 2003, Executive Branch agencies (excluding the U.S. Postal Service) reported 81,283 non-fatal injuries, and sixty-one fatalities. This equates to 50,161 hours for 1,941,511 Federal employees or slightly more than one and one half minutes for each covered employee. This figure assumes fifteen minutes to complete the log entry and twenty-two minutes to complete the 301 forms for 100% of the incidents.

Part 1904 requires private sector employers to provide the Log and Incident Reports to an OSHA inspector during a compliance visit. Under today's final rule, Federal establishments, like

their private sector counterparts, will also be required to provide a copy of these forms to the inspector on request. OSHA notes that even though the requirement to produce the forms was not specifically included in the existing Part 1960 recordkeeping provisions, in past practice, Federal agencies have provided the copies to OSHA inspectors. OSHA thus does not believe this small change in the requirements will result in burdens or costs for Federal establishments.

The final rule also requires the senior establishment management official, or someone in the direct chain of command between the senior establishment manager and the agency head, to certify that he or she has examined the Annual Summary and “reasonably believes, based on his or her knowledge of the process by which the information was recorded, that the Annual Summary is correct and complete.” This provision is not significantly different from the private sector requirement for certification by the owner of the company, an officer of the corporation, the highest ranking company official working at the establishment, or the immediate supervisor of the highest ranking company official working at the establishment. OSHA estimates the amount of time for this activity at thirty minutes. OSHA also estimates that the amount of time necessary for the record keeper to prepare the Annual Summary at twenty minutes. Additionally, unlike the existing Part 1960 recordkeeping system, Part 1904 requires employers to set up a way for employees to report work-related injuries and illnesses and inform employees about the approach they have chosen. OSHA assumes that it will take a Personnel Training and Labor Relations Specialist (or equivalent) at each Federal establishment an average of twenty minutes to decide on a system and inform employees. The “way” will usually simply involve directing supervisors to inform their subordinates, as part of their usual communication with them, to report work-related injuries and illnesses to their supervisor. Most, if not all, Federal establishments routinely require employees to report problems of any kind to their supervisors,

and reporting injuries and illnesses is simply one of the things employees report. OSHA believes there will be no additional cost associated with the supervisors' forwarding of these reports to the person in charge of recordkeeping because this activity is already part of supervisors' duties.

Costs of transition

~~The Occupational Safety and Health Administration does not consider an economic feasibility study to be necessary for the purpose of this regulation. In the private sector employers with as few as eleven employees must comply with the requirements of 29 CFR Part 1904. It cannot be reasonably argued that the costs would be too great for the United States Government to comply. As discussed above the US Postal Service converted their recordkeeping to conform with 1904 in 1999 and then in 2002 made the transition to the revised 1904. They did not track the costs incurred in making these transitions but did not feel that the costs exceeded the benefits of the change.~~

~~Like their private sector counterparts, federal agencies will incur the initial costs of training recordkeeping personnel. This is estimated at one hour per person trained. Each Federal establishment will incur the annual costs of setting up the log and posting the annual summary. OSHA estimated that this will require 8 minutes per establishment. However, since federal agencies already must keep a log, and must post a summary, it is estimated that these tasks will not create additional costs for federal agencies. The proposed regulation requires the senior establishment management official or someone in the direct chain of command between the senior establishment manager and the agency head to certify that he or she has examined this document and “reasonably believes, based on his or her knowledge of the process by which the information was recorded, that the annual summary is correct and complete.” This is not~~

~~significantly different than the private sector requirement for certification by the owner of the company, an officer of the corporation, the highest ranking company official working at the establishment, or the immediate supervisor of the highest ranking company official working at the establishment. OSHA estimated the amount of time for this activity as 30 minutes. The amount of time for the record keeper to prepare the annual summary was estimated as 20 minutes.~~

~~The costs of maintaining the Log and Incident Reports are related to the number of cases recorded. During the private sector rule making OSHA estimated that it will require an average of 15 minutes for the Log entry plus, for 18% of the cases, 22 minutes for the 301 form following the requirements of 29 CFR part 1904. In fiscal year 2003 Executive Branch agencies (excluding the US Postal Service)^{*} reported 81,283 non fatal injuries, and 61 fatalities. This equates to 50161 hours for 1,941,511 federal employees or slightly more than 1.5 minutes for each covered employee. This figure assumes 15 minutes to complete the log entry and 22 minutes to complete the 301 for 100% of the incidents.~~

~~————^{*}The Postal service is excluded from this figure, because they are already covered by the requirements of 29 CFR 1904.~~

~~The current rule requires employers to provide the Log and Incident Reports to an OSHA inspector during a compliance visit. Federal establishments like their private sector counter parts are required by the final rule to provide a copy of these forms to the inspector on request. OSHA believes that providing copies has in fact been the practice in the past, even though former rule~~

~~did not spell this out specifically. OSHA thus does not believe that this small change in the regulation will result in burdens or costs for federal establishments.~~

~~This regulation requires employers to set up a way for employees to report work related injuries and illnesses and inform employees about the approach they have chosen. OSHA assumes that it will take a Personnel Training and Labor Relations Specialist (or equivalent) at each establishment an average of twenty minutes to decide on a system and inform employees of it. The “way” will usually simply involve directing supervisors to inform their subordinates, as part of their usual communication with them, to report work related injuries and illnesses to their supervisor. Most, if not all, establishments require employees routinely to report problems of any kind to their supervisors, and reporting injuries and illnesses is simply one of the kinds of things employees report. OSHA believes there will be no additional cost associated with the supervisors’ forwarding of these reports to the person in charge of recordkeeping, because this is already part of supervisors’ duties.~~

~~A costs analysis conducted for the private sector rule making on 29 CFR 1904 estimated the average annual costs of compliance with this regulation for private sector establishments were less than \$58.00 for all businesses in the private sector. For establishments with fewer than 20 employees, the average annual costs per establishment were \$31.63 (Federal Register Vol 66, No. 13 / Friday, January 19, 2001 / page 6108).~~

~~Because the requirements for the federal establishments will be essentially the same as covered private sector establishments there is no reason to believe that the costs per federal establishment will exceed the costs for private sector establishments.~~

~~For a full explanation of the costs and how they were estimated, see Federal Register Vol 66, No. 13 / Friday, January 19, 2001 / pages 6089—6108.~~

In addition to providing training and compliance assistance, during the first year in which the Part 1904 recordkeeping provisions are in effect, OSHA compliance officers conducting inspections at Federal establishments will focus on assisting Federal agencies to comply with the new rule. OSHA will not issue notices for violations under Part 1960, Subpart I, until January 1, 2006, provided that the Federal agency is attempting in good faith to meet its recordkeeping obligation and agrees to make corrections necessary to bring the records into compliance.

Some agencies questioned how OSHA would communicate the Part 1904 recordkeeping change to the Federal sector. OSHA suggested that the field Federal Safety and Health Councils (FSHC) would be a good source to help communicate information across the country. The FSHCs, which include approximately fifty Chapters throughout the country, are cooperative interagency organizations chartered by the Secretary of Labor to facilitate the exchange of information regarding occupational safety and health. OSHA agreed to participate in communication and training as resources permitted, and believed that train-the-trainer courses would work well to help prepare Federal agencies throughout the nation for the recordkeeping change.

In response to a concern about whether Federal agencies and their employees will be more inclined to underreport or manipulate the recording of injuries, OSHA stated that like the current OWCP-based recording system, the accuracy of records under Part 1904 relies on agency and employee integrity.

Another issue raised was whether as a result of the OSHA recordkeeping system change agencies would lose the independent data provided by OWCP. OSHA explained that OWCP data will not be impacted by this change, and will continue to be available to Federal agencies. The OWCP data track different issues and information, and would still be available to measure workers' compensation injuries and associated costs. OSHA agrees that Federal agencies may use OWCP CA forms in lieu of the OSHA 301 forms, provided that the Federal agencies include the additional OSHA-required information on an attached supplemental sheet (to include the four questions mentioned earlier).

One commenter raised the concern that including applicable portions of the Part 1904 system would require Federal agencies to record different or non-traditional incidents, such as information related to workplace violence. OSHA believes that requiring Federal agencies to keep records under the Part 1904 system would have the opposite effect. Indeed, under existing Part 1960, Subpart I, Federal agencies are required to report on the OSHA log injuries resulting from workplace violence when medical care is provided and information is reported on the OWCP CA-1 Form. Likewise, OSHA's current recordkeeping requirements for the private sector under Part 1904 include the recording of injuries resulting from workplace violence. OSHA believes that the standardization of recordkeeping requirements will eliminate much of the uncertainty as to whether specific incidents should be recorded, and will require Federal agencies to record injuries and illnesses regardless of whether they are recordable under OWCP.

Another apprehension raised by one commenter was whether changing to the Part 1904 requirements would cause injury and illness rates to go up. OSHA explained that the change could affect those rates. Some agencies might experience a reduction in rates, some might have rates that go up, and some might have rates that remain the same. The increased accuracy in

recordkeeping resulting from the change to the Part 1904 system could cause injury and illness rates to go down, but if an agency is not recording them accurately under existing Part 1960, Subpart I, the rates could go up. For instance, injuries and illnesses related to diagnosis, prevention, first aid, or in some cases travel on temporary duty (TDY) would no longer be recordable, and would result in a reduction in the number of recordable incidents. As stated earlier, one of the reasons for making the change is because the two systems do not track the same incidents, and therefore do not keep a record of the same data. The data will change, and this may cause injury and illness rates to go up or down. It should be noted that the current system under 29 CFR 1960 does not track injuries of contract employees. Under 29 CFR 1904.31, employers “must record the recordable injuries and illnesses that occur to employees who are not on your payroll if you supervise these employees on a day-to-day basis.” Because of this provision, Federal agencies will be responsible for recording recordable injuries sustained by independent contractors who work alongside Federal employees. If a Federal agency chooses to use OWCP Forms CA-1, CA-2 and CA-6 for the purpose of complying with OSHA’s recording requirements, agencies should not use the CA forms for recording injuries sustained by contractors. To do so would create administrative problems for OWCP and potential confusion over workers’ compensation coverage for such individuals. As a result, OSHA Form 301 must be used to record injuries and illnesses of contract employees.

OSHA acknowledged that agencies could incur additional costs to develop information systems that would capture their injury and illness experience and subsequent data roll-up (collecting and assembling injury and illness statistics from subordinate establishments into reports that reflect the total agency experience), but explained that the Part 1904 recordkeeping change does not include a requirement mandating data roll-up. Federal agencies would not have

to invest in a data roll-up system, but OSHA acknowledged that agencies would have the discretion to use the data as a management tool for executing their safety and health programs. The meeting closed with the agreement that absent the mandate to roll-up the data, the agency representatives had no substantive reasons why OSHA should not go forward with the proposed recordkeeping change. Of note, while most participants were opposed to mandating roll-up, there was a consensus that OSHA should look at systems that could be offered Government-wide to assist agencies in the roll-up of their safety and health recordkeeping data.

VII. Access to Injury and Illness Records

As noted above, the final rule requires Federal agencies to use the same injury and illness reporting forms as the private sector. Specifically, Federal agencies will be required to use OSHA Form 300, Log of Work-Related Injuries and Illnesses (replacing the OSHA Federal Agency Log), and OSHA Form 300-A, Summary of Work-Related Injuries, and OSHA Form-301, Injury and Illness Incident Report (replacing OSHA Form 101, Supplementary Record of Occupational Injuries and Illnesses). As with the existing requirements under Part 1960, Subpart I, OSHA will continue to allow Federal agencies to use alternate forms, such as workers' compensation claim forms, to report OSHA injury and illness information. The use of alternate workers' compensation claim forms to record OSHA injury and illness information is also currently available to private sector employers under Part 1904. In both the private sector and Federal sector, any use of alternate forms to record occupational injuries and illnesses must include all OSHA-related information (29 CFR 1904.29(a) and 29 CFR 1960.66(e)).

The final rule continues OSHA's long-standing policy of allowing employees and their representatives to access the occupational injury and illness information kept by their employers, with some limitations. Part 1904 requires an employer to provide limited access to the OSHA

injury and illness recordkeeping forms to current and former employees, as well as to two types of employee representatives. The first is a personal representative of an employee or former employee, who is a person that the employee or former employee designates, in writing, as his or her personal representative, or is the legal representative of a deceased or legally incapacitated employee or former employee. The second is an authorized employee representative, which is defined as an authorized collective bargaining agent of one or more employees working at the employer's establishment.

29 CFR 1904.35 accords employees and their representatives three separate access rights. First, it gives any employee, former employee, personal representative, or authorized employee representative the right to a copy of the current OSHA 300 Log, and to any stored OSHA 300 Log(s), for any establishment in which the employee or former employee has worked. The employer must provide one free copy of the OSHA 300 Log(s) by the end of the next business day. The employee, former employee, personal representative, or authorized employee representative is not entitled to see, or to obtain a copy of, the confidential list of names and case numbers for privacy cases (as discussed above).

Second, any employee, former employee, or personal representative is entitled to one free copy of the OSHA 301 Incident Report describing an injury or illness to that employee, by the end of the next business day. Finally, an authorized employee representative is entitled to copies of the right-hand portion of all OSHA 301 forms for the establishment(s) where the representative represents one or more employees under a collective bargaining agreement. The right-hand portion of the 301 form contains the heading "Information about the case," and elicits information about how the injury or illness occurred, including the employee's actions just prior to the incident, the materials and tools involved, and how the incident occurred, but does

not contain the employee's name. No information other than that on the right-hand portion of the OSHA 301 form may be disclosed to an authorized employee representative. The employer must provide the authorized employee representative with one free copy of all the 301 forms for the establishment within seven calendar days.

Part 1904 also includes a number of provisions requiring employers to protect the privacy of employees when recording injuries and illnesses. For certain injuries and illnesses listed under § 1904.29, the employer must omit the employee's name from the OSHA 300 Log. Instead, the employer simply enters "privacy case," and keeps a separate, confidential list containing the identifying information. The separate listing is needed to allow OSHA and other government representatives to obtain the employee's name during a workplace inspection and to assist employers in keeping track of such cases in the event future revisions to the entry become necessary. This approach also allows the employer to provide OSHA 300 Log data to employees, former employees and employee representatives, as required by § 1904.35, while at the same time protecting the privacy of workers who have experienced occupational injuries and illnesses that have privacy concerns.

Under Part 1904, privacy cases include injury and illness to an intimate body part or the reproductive system; injury or illness resulting from sexual assault; mental illnesses; HIV infection, hepatitis, or tuberculosis; needlestick injuries and cuts from sharp objects that are contaminated with another person's blood or other potentially infectious material; and, other illnesses, if the employee voluntarily requests that his or her name not be entered on the log. Mental illnesses are not considered work-related unless the employee voluntarily provides the employer with an opinion from a physician or other licensed health care professional with appropriate training and experience stating that the employee has a mental illness that is work-

related. Also, if the employer has a reasonable basis to believe that information describing the privacy concern case may be personally identifiable even though the employee's name has been omitted, the employer may use discretion in describing the injury or illness. In such cases, the employer must enter enough information to identify the incident and the general severity of the injury or illness.

The Privacy Act of 1974, 5 U.S.C. § 552a (2000) regulates the collection, maintenance, use, and dissemination of personal information by Federal agencies. Section 552a(e)(4) of the Privacy Act requires that all Federal agencies publish in the Federal Register a notice of the existence and character of their systems of records. The Privacy Act permits the disclosure of information about individuals without their consent pursuant to a published routine use where the information will be used for a purpose that is compatible with the purpose for which the information was originally collected.

OSHA anticipates that Federal agencies will develop agency-specific data systems for recording illness and injury information to meet the requirements of the revised Part 1960, Subpart I. While OSHA does not require that Federal employee illness and injury records be retrieved by individual identifiers, some Federal agencies developing illness and injury data systems may find it useful to do so. Each agency is responsible for assuring its own compliance with the Privacy Act, and for establishing Privacy Act systems of records when the agency determines such compliance is required. As noted above, the revised recordkeeping rules include mandatory access rights to certain illness and injury records, such as an employee's right to copy the OSHA 300 Log and an employee representative's right to view the non-identifying right-hand portion of the OSHA 301 Incident Report (29 CFR 1904.35). Where an agency determines that all or part of the records required under the revised OSHA recordkeeping rule are

part of a Privacy Act records system, the agency is responsible for issuing appropriate Notices of Routine Use to ensure that all access rights prescribed in Part 1960, Subpart I, are preserved.

VIII. Technical Revisions to Existing Requirements

As described elsewhere in today's final rule, Federal agency injury and illness recordkeeping requirements will, with certain modifications, be the same as those in subparts C, D, E and G of Part 1904. However, in order to eliminate confusion, and provide for a single definition, today's final rule will not adopt the definition of "establishment" in Part 1904.46. Instead, the definition of establishment in existing Part 1960.2(h) will remain applicable to Federal agencies. OSHA believes the existing definition of establishment in 1960.2 better describes the application of that term in the Federal sector.

Unlike the private sector, it is common for most Federal agencies to have multiple establishments throughout their national and regional offices. Under Part 1960, the term *establishment* means a single physical location where business is conducted or where services or operations are performed. Where distinctly separate activities are performed at a single physical location, such as in a typical national or regional office of an executive branch department where headquarters for several agencies or programs are housed, each agency headquarters operation must be treated as a separate establishment. At the Department of Labor, for example, regional and national offices for OSHA, the Employment Standards Administration, Employment and Training Administration, Employee Benefits Security Administration, etc. would all be treated as distinct establishments for illness and injury recordkeeping purposes. Typically, an establishment as used in Part 1960 refers to a field activity, regional office, area office, installation, or facility.

OSHA is also amending certain provisions in existing Part 1960 to eliminate duplication and provide consistency with the requirements in Part 1904. First, today's final rule amends Part 1960.2(l) to incorporate the regulatory text from the definition of "injury and illness" set forth in Part 1904.46. As a result, the existing language defining *Categories of injuries/illnesses/fatalities* in 1960.2(l)(1) through (6) is deleted, and replaced with the definition for injury and illness from 1904.46.

Likewise, in order to make Part 1960 consistent with Part 1904, today's final rule modifies the requirements in existing 1960.29(b) addressing accident investigation. Existing 1960.29 provides that, while all accidents should be investigated, such investigation should be reflective of the seriousness of the accident. Existing subparagraph (b) includes a statement directing Federal agencies that "each accident which results in a fatality or the hospitalization of five or more employees shall be investigated to determine the causal factors involved." Today's final rule modifies this provision to direct Federal agencies to conduct an investigation after "a fatality or the in-patient hospitalization of three or more employees." This change preserves the requirement in the current Part 1960 that federal agencies investigate multiple-hospitalization accidents, but reduces the trigger from five to three to conform with the revised requirements in 29 CFR 1960.70 and 1904.39 that agencies report to OSHA accidents that involve a fatality or the hospitalization of three or more employees.

IX. Administrative Procedure

This rule relates to matters of Federal agency management and personnel and, therefore, is exempt from the usual Administrative Procedure Act requirements for prior notice and comment and a 30-day delay in effective date. See, 5 U.S.C. 553(a)(2) and (d).

The Paperwork Reduction Act (44 U.S.C. 3501 et seq.) does not apply because this rulemaking, which applies only to Federal agencies, does not create or modify information collection requirements that require the approval of the Office of Management and Budget. Additionally, the Department of Labor has determined that this rulemaking is a nonmajor rule under the Congressional Review Act (5 U.S.C. Chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives, and General Accounting Office in accordance with that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication.

Because this rulemaking applies only to Federal agencies, the Department of Labor certifies pursuant to the Regulatory Flexibility Act, (5 U.S.C. 605(b)), that this final rule will not have a significant impact on a substantial number of small entities. Similarly, the requirements of the Unfunded Mandates Reform Act of 1995 and Executive Order 13132 addressing “Federalism” do not apply. The Department of Labor has also determined that this is not a “significant regulatory action” under Section 3(f) of Executive Order 12866, “Regulatory Planning and Review,” and that it relates to a matter of agency organization, management, or personnel. See Executive Order 12866; Section 3(d)(3).

X. Summary and Explanation of the Final Rule, 29 CFR 1960, Subpart I, Recordkeeping and Reporting Requirements

As described below, the final rule revises OSHA’s requirements for the recording and reporting of work-related deaths, injuries, and illnesses for Federal agencies.

The final rule becomes effective on January 1, 2005. At that time, the following recordkeeping actions will occur:

(1) The revisions to 29 CFR Part 1960, Subpart I, entitled Recordkeeping and Reporting Requirements, which include reference to pertinent provisions in 29 CFR Part 1904, will be in effect.

(2) Federal agencies will utilize the same injury and illness recordkeeping forms that the private sector is required to use:

(A) OSHA Form 300, Log of Work-Related Injuries and Illnesses (replaces the Log of Federal Occupational Injuries and Illnesses);

(B) OSHA Form 300-A, Summary of Work-Related Injuries and Illnesses;

(C) OSHA Form 301, Injury and Illness Incident Report; and

(3) The following OSHA publication will be withdrawn: OSHA 2014 (revised 1986);

(4) All letters of interpretation regarding the former Federal agency recordkeeping requirements will be withdrawn and removed from the OSHA CD-ROM and the OSHA Internet site.

Summary of the Modifications to Existing 29 CFR Part 1960, Subparts A and D.

Today's final rule deletes the existing language in 29 CFR 1960.2(l) addressing the definition of "Categories of injuries/illnesses/fatalities," and replaces it with the definition of "injury and illness" set forth at 29 CFR 1904.46. The change is necessary to eliminate duplicative definitions in Part 1960 and Part 1904. Accordingly, new Section 1960.2(l) provides:

"(l) Injury or Illness. An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illness includes both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning."

Existing 29 CFR 1960.29 is revised to provide: “(b) In any case, each accident which results in a fatality or the hospitalization of three or more employees shall be investigated to determine the causal factors involved. Except to the extent necessary to protect employees and the public, evidence at the scene of an accident shall be left untouched until inspectors have an opportunity to examine it.” This change preserves the requirement in the current Part 1960 that federal agencies investigate multiple-hospitalization accidents, but reduces the trigger from five to three to conform with the revised requirements in 29 CFR 1960.70 and 1904.39 that agencies report to OSHA accidents that involve a fatality or the hospitalization of three or more employees.

Summary of the Modifications to Existing 29 CFR Part 1960, Subpart I, to Make the Pertinent Recordkeeping Requirements in Part 1904 Applicable to the Federal Sector.

Today’s final rule includes modifications to existing 29 CFR 1960, Subpart I, to make the requirements in Part 1904 applicable to the Federal sector. The final rule revises existing 29 CFR 1960.66 - Purpose, scope and general provisions - to include new language, as well as removes and redesignates certain subparagraphs. Subparagraph (a), which includes new language, states: “The purpose of this Subpart is to establish uniform requirements for collecting and compiling by agencies of occupational safety and health data, for proper evaluation and necessary corrective action, and to assist the Secretary in meeting the requirement to develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics.”

Subparagraph (b) also includes new language and makes certain provisions in 1904 applicable to Federal agencies. It provides: “Except as modified by this Subpart, Federal agency injury and illness recording and reporting requirements will be the same as 29 CFR 1904

Subparts C, D, E, and G.” Subparagraph (b) also makes clear that the definition of “establishment” found in 29 CFR 1960.2(h) remains applicable to Federal agencies

Existing 1960.66(c), which directs Federal agencies to utilize collected information to identify unsafe and unhealthful working conditions and establish program priorities, is retained.

The final rule removes the language in existing subparagraph (d) and replaces it with existing subparagraph (e). Accordingly, existing subparagraph (e), which provides for the use of more detailed recordkeeping forms than those provided by the Department of Labor, is now new subparagraph (d). The new subparagraph (d) also includes the following additional language: “Because of the unique nature of the national recordkeeping program, Federal agencies must have recording and reporting requirements that are the same as Part 1904 for determining which injuries and illnesses will be entered into the records and how they are entered. All other injury and illness recording and reporting requirements used by any Federal agency may be more stringent than, or supplemental to, the requirements of Part 1904, but must not interfere with the agency’s ability to provide the injury and illness information required by Part 1904.”

The final rule also removes existing subparagraph (f), but retains the requirements in existing subparagraph (g). However, existing subparagraph (g), which addresses requirements for secrecy when Federal agencies collect information on occupational injuries and illness related to national defense and foreign policy, is redesignated as new subparagraph (e).

The final rule also includes the following note at the end of Part 1960.66: “The recording or reporting of a work-related injury, illness or fatality does not mean that the Federal agency or employee was at fault, that an OSHA rule has been violated, or that the employee is eligible for workers’ compensation or other benefits.”

“The requirements of this Part do not diminish or modify in any way a Federal agency’s responsibilities to report or record injuries and illnesses as required by the Office of Workers’ Compensation Programs under the Federal Employees’ Compensation Act (FECA), 5 USC 8101 et seq.”

The final rule replaces existing 29 CFR 1960.67 – Log of occupational injuries and illnesses - with a new paragraph clarifying who is responsible for certifying the OSHA 300 Log at Federal establishments. The new Section 1960.67 provides: “As required by 29 CFR 1904.32, a company executive must certify that he or she has examined the OSHA 300 Log and that he or she believes, based on his or her knowledge of the process by which the information was recorded, that the annual summary is correct and complete. For Federal establishments, the person who performs the certification must be one of the following: (1) the senior establishment management official, (2) the head of the Agency for which the senior establishment management official works, or (3) any management official who is in the direct chain-of-command between the senior establishment management official and the Agency head.

The final rule also includes a note to Section 1960.67 explaining that the modification to the above requirement for certification of Federal agency injury and illness records is necessary because the private sector position titles contained in the regulation do not fit the Federal agency position titles for agency executives. The Federal officials listed in this paragraph are intended to be the equivalent of the private sector officials who are required to certify records under 1904.32(b)(4).

Today’s final rule removes existing Section 1960.68 addressing requirements associated with Federal agency completion of supplementary records of occupational injuries and illnesses. Instead, the new Section 1960.68 addresses “prohibition against discrimination” and provides:

“29 CFR 1904.36 refers to Section 11(c) of the Occupational Safety and Health Act. For Federal agencies, the words ‘Section 11(c)’ shall be read as ‘Executive Order 12196, Section 1-201(f).’”

The revised section includes a note explaining that the modification is necessary because Section 11(c) of the Occupational Safety and Health Act only applies to private sector employers and the U.S. Postal Service. The corresponding prohibitions against discrimination applicable to Federal employers are contained in Section 1-201(f) of Executive Order 12196.

Existing Section 1960.69, which includes requirements for Federal agencies to complete annual injury and illness summaries, is removed. The new Section 1960.69 sets forth provisions outlining the transition from the former rule and the retention and updating of old forms. The new paragraph states: “(a) Between October 1, 2004 and January 1, 2005, agencies must continue to use to record and track their occupational injuries and illnesses. During that period, Federal agencies may choose to comply with the requirements of the old Part 1960, Subpart I, or they may choose with the requirements of 29 CFR 1904. (b) Federal agencies must retain copies of the recordkeeping records utilized under the old system for five years following the year to which they relate and continue to provide access to the data as though these forms were the OSHA Form 300 Log and Form 301 Incident Reports. Agencies are not required to update the old forms.”

The final rule revises existing Section 1960.70, addressing the reporting of serious accidents, to read: “Agencies must provide the Office of Federal Agency Programs with a summary report of each fatal and catastrophic accident investigation. The summaries must address the date/time of accident, agency/establishment name and location, and consequences, description of operation and the accident, causal factors, applicable standards and their effectiveness, and agency corrective/preventive actions.” The final rule also includes a note to

Section 1960.70 explaining that the paragraph is retained from the previous regulation 29 CFR 1960.70 paragraph (e). The requirements of this paragraph are in addition to the requirements for reporting fatalities and multiple hospitalization incidents to OSHA under 29 CFR 1904. 39.

The final rule deletes existing Sections 1960.71, Location and utilization of records and reports; 1960.72, Access to records by Secretary; and 1960.73, Retention of records. Existing 1960.74, addressing Federal agencies' annual reports, is retained, but is redesignated as Section 1960.71. Subparagraph (a)(2) of the new 1960.71 has been revised to provide: "The Secretary must provide the agencies with the guidelines and format for the reports at the time they are requested."

Today's final rule also provides that new Sections 1960.72 through 1960.74 are reserved.

XI. Authority and Signature

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, pursuant to Sections 19 of the Occupational Safety and Health Act of 1970 (84 Stat. 1609, 1614; 29 U.S.C. 688, 673), 5 U.S.C. 553, Secretary of Labor's Order No. 1-90 (55 FR 9033), and Executive Order 12196.

Signed at Washington, D.C., this day of March 2004.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

XII. Amendment to 29 CFR part 1960 –BASIC PROGRAM ELEMENTS FOR FEDERAL EMPLOYEE OCCUPATIONAL SAFETY AND HEALTH PROGRAMS AND RELATED MATTERS

For the reasons stated in the preamble, 29 CFR Part 1960 is amended to read as follows:

1. The authority citation for Part 1960 continues to read as follows:

Authority: Sections 19 and 24 of the Occupational Safety and Health Act of 1970 (84 Stat. 1609, 1614; 29 U.S.C. 668, 673), 5 U.S.C. 553, Secretary of Labor's Order No. 1-90 (55 FR 9033), and Executive Order 12196.

2. The table of contents for Part 1960 is amended by revising the entries for Subpart I to read as follows:

1960.66 Purpose, scope, and general provisions

1960.67 Federal agency certification of the injury and illness annual summary

1960.68 Prohibition against discrimination

1960.69 Transition from former rule and retention and updating of old forms

1960.70 Reporting of serious accidents

1960.71 Agency annual reports

1960.72-1960.74 [Reserved]

Subpart A—General

3. 29 CFR part 1960, Subpart A, is revised to read as follows:

§ 1960.2 Definitions.

* * * * *

(1) Injury or Illness. An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illness includes both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning.

* * * * *

Subpart D—Inspection and Abatement

4. 29 CFR part 1960, subpart D, is revised to read as follows:

§1960.29 Accident Investigation

* * * * *

(b) In any case, each accident which results in a fatality or the hospitalization of three or more employees shall be investigated to determine the causal factors involved. Except to the extent necessary to protect employees and the public, evidence at the scene of an accident shall be left untouched until inspectors have an opportunity to examine it.

* * * * *

Subpart I—Recordkeeping and Reporting Requirements

5. 29 CFR part 1960, Subpart I, is revised to read as follows:

§1960.66 Purpose, scope and general provisions.

(a) The purpose of this Subpart is to establish uniform requirements for collecting and compiling by agencies of occupational safety and health data, for proper evaluation and necessary corrective action, and to assist the Secretary in meeting the requirement to develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics.

(b) Except as modified by this Subpart, Federal agency injury and illness recording and reporting requirements shall comply with the requirements under 29 CFR 1904, Subparts C, D, E, and G, except that the definition of “establishment” found in 29 CFR 1960.2(h) will remain applicable to Federal agencies."

(c) Each agency shall utilize the information collected through its management information system to identify unsafe and unhealthful working conditions, and to establish program priorities.

(d) The provisions of this subpart are not intended to discourage agencies from utilizing recordkeeping and reporting forms which contain a more detailed breakdown of information than the form provided by the Department of Labor. Because of the unique nature of the national recordkeeping program, Federal agencies must have recording and reporting requirements that are the same as Part 1904 for determining which injuries and illnesses will be entered into the records and how they are entered. All other injury and illness recording and reporting requirements used by any Federal agency may be more stringent than, or supplemental to, the requirements of Part 1904, but must not interfere with the agency's ability to provide the injury and illness information required by Part 1904.

(e) Information concerning occupational injuries and illnesses or accidents which, pursuant to statute or Executive Order, must be kept secret in the interest of national defense or foreign policy shall be recorded on separate forms. Such records shall not be submitted to the Department of Labor but may be used by the appropriate Federal agency in evaluating the agency's program to reduce occupational injuries, illnesses and accidents.

Note to § 1960.66: The recording or reporting of a work-related injury, illness or fatality does not mean that the Federal agency or employee was at fault, that an OSHA rule has been violated, or that the employee is eligible for workers' compensation or other benefits. The requirements of this Part do not diminish or modify in any way a Federal agency's responsibilities to report or record injuries and illnesses as required by the Office of Workers'

Compensation Programs under the Federal Employees' Compensation Act (FECA), 5 USC 8101 et seq.

§1960.67 Federal Agency Certification of the Injury and Illness Annual Summary (OSHA 300-A or equivalent)

As required by 29 CFR 1904.32, a company executive must certify that he or she has examined the OSHA 300 Log and that he or she believes, based on his or her knowledge of the process by which the information was recorded, that the annual summary is correct and complete. For Federal establishments, the person who performs the certification shall be one of the following: (1) the senior establishment management official, (2) the head of the Agency for which the senior establishment management official works, or (3) any management official who is in the direct chain of command between the senior establishment management official and the head of the Agency.

Note to §1960.67: This modification to the requirement for certification of Federal agency injury and illness records is necessary because the private sector position titles contained in the regulation do not fit the Federal agency position titles for agency executives. The federal officials listed in this paragraph are intended to be the equivalent of the private sector officials who are required to certify records under 1904.32(b)(4).

§1960.68 Prohibition against discrimination.

Title 29 CFR 1904.36 refers to Section 11 (c) of the Occupational Safety and Health Act. For Federal agencies, the words "Section 11(c)" shall be read as "Executive Order 12196 Section 1-201(f)."

Note to §1960.68: This modification is necessary because Section 11(c) of the Occupational Safety and Health Act only applies to private sector employers and the U.S. Postal

Service. The corresponding prohibitions against discrimination applicable to Federal employers are contained in Section 1-201(f) of Executive Order 12196.

§1960.69 Transition from former rule and retention and updating of old forms.

(a) Between October 1, 2004 and January 1, 2005, agencies must continue to record and track their occupational injuries and illnesses. During that period, Federal agencies may choose to comply with the requirements of the old Part 1960, Subpart I, or they may choose to comply with the requirements of 29 CFR 1904.

(b) Federal agencies must retain copies of the recordkeeping records utilized under the old system for five years following the year to which they relate and continue to provide access to the data as though these forms were the OSHA Form 300 Log and Form 301 Incident Report. Agencies are not required to update the old forms.

§1960.70 Reporting of serious accidents.

Agencies must provide the Office of Federal Agency Programs with a summary report of each fatal and catastrophic accident investigation. The summaries shall address the date/time of accident, agency/establishment named and location, and consequences, description of operation and the accident, causal factors, applicable standards and their effectiveness, and agency corrective/preventive actions.

Note to §1960.70: This paragraph is retained from the previous regulation 29 CFR 1960.70 paragraph (e). The requirements of this paragraph are in addition to the requirements for reporting fatalities and multiple hospitalization incidents to OSHA under 29 CFR 1904. 39.

§1960.71 Agency annual reports.

(a) The Act and E.O. 12196 require all Federal agency heads to submit to the Secretary an annual report on their agency's occupational safety and health program, containing such information as the Secretary prescribes.

(1) Each agency must submit to the Secretary by January 1 of each year a report describing the agency's occupational safety and health program of the previous fiscal year and objectives for the current fiscal year. The report shall include a summary of the agency's self-evaluation findings as required by 1960.78(b).

(2) The Secretary must provide the agencies with the guidelines and format for the reports at the time they are requested.

(3) The agency reports will be used in preparing the Secretary's report to the President.

(b) The Secretary will submit to the President by October 1 of each year a summary report of the status of the occupational safety and health of Federal employees based on agency reports, evaluations of individual agency progress and problems in correcting unsafe or unhealthful working conditions, and recommendations for improving their performance.

§§ 1960.72 – 1960.74 [Reserved]